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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| RAUL VASQUEZ,<br>Plaintiff and Appellant,<br>v.<br>RUKHSANA TASNEEM et al.,<br>Defendants and Respondents. | A153689<br><br>(San Francisco City and County Sup. Ct. No. CGC-15-548299) |

Appellant Raul Vasquez appeals from a judgment entered after a court trial in which he was found to have breached a commercial lease with respondents Rukhsana Tasneem and Mohammad Iqbal (the landlords). He contends the trial court lacked jurisdiction to find that he breached the lease, miscalculated its award of damages and prejudgment interest, and wrongly determined the landlords to be the prevailing parties for purposes of awarding attorney fees. We affirm.

## I.
## FACTUAL AND PROCEDURAL BACKGROUND

In early 2014, Vasquez entered into a lease with the landlords for property on Third Street in San Francisco where he wanted to operate an auto body shop. Vasquez started operating the body shop and engaging in other commerce on the property without a permit, but he was caught and assessed penalties by the city. He also soon "fell delinquent on his rent obligations" and stopped paying rent altogether in July 2015. Unlawful-detainer proceedings were initiated, and Vasquez agreed to a stipulated

judgment requiring him to vacate the premises by January 31, 2016. He failed to leave by that date, however, and the following month he was evicted by the sheriff. While the unlawful-detainer proceedings were pending, Vasquez filed his complaint in this case alleging that the landlords breached the lease by "refus[ing] to refund to [him] the money [he] paid." His apparent theory was that he was entitled to have the rent payments he made returned to him because of his "inability to obtain permits within a commercially reasonable time." The landlords answered by generally denying the allegations and asserting numerous affirmative defenses. After Vasquez was evicted, they filed a cross-complaint alleging that he had breached the lease and was negligent by not seeking necessary permits to operate his business; and they sought damages, attorney fees, and costs. Vasquez generally denied the allegations of the cross-complaint and asserted his own affirmative defenses A trial to the court was held in September 2017, but it was not transcribed and, thus, no reporter's transcript is included in our record. In November 2017, the trial court issued an 11-page statement of decision, to which Vasquez did not object, and a judgment in favor of the landlords was entered on December 14, 2017.

## II.
## DISCUSSION

### *A. The Standards of Review.*

We review de novo questions of law. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1136.) But "[w]here no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

### *B. The Trial Court Had Jurisdiction to Find that Vasquez Breached the Lease.*

Vasquez first argues that the trial court lacked jurisdiction to find that he breached the lease by not timely seeking a permit to operate the auto body shop. According to

him, the court was without authority to make this finding because the issue of timeliness was not raised in the pleadings. The argument is spurious.

The parties agree that the lease specified that "[Vasquez was] responsible for pulling all correct permits and zoning." In his complaint, Vasquez alleged he had "performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing" and was entitled to "a commercially reasonable timeframe" in which to obtain permits. The landlords denied Vasquez had satisfied his lease obligations, and they affirmatively alleged that he "breached the [lease] by failing to obtain permits." In their cross-complaint, they reiterated that Vasquez had "breached the Lease by failing to obtain all permits and [nevertheless] operating his business," and they separately alleged that he negligently breached a duty "to obtain proper permits."

Thus, whether Vasquez breached the lease by not seeking the necessary permits was squarely within the scope of issues framed by the pleadings. In a finding that we must accept given the lack of a transcript, the trial determined that "the necessity of promptly applying for a permit to legally operate [Vasquez's] auto repair shop was paramount" to the parties in entering the lease. The court elaborated that, despite this importance, Vasquez "**never** filed an application with the planning department for the required . . . permit to operate his auto body business," and "did absolutely nothing toward obtaining the . . . permit from the planning department and continued to operate the business illegally for over a year." The court ruled that Vasquez "failed to perform his contractual obligations to apply for a conditional use permit within a reasonable time."

Vasquez argues that this ruling was improper because the pleadings did not mention Civil Code section 1657, which provides, "If no time is specified for the performance of an act required to be performed, a reasonable time is allowed." The argument is meritless. This section sets forth a legal standard, but it is not an independent element of a cause of action and it did not need to be specifically mentioned in the complaint. (See *Prue v. Brady Co./San Diego, Inc*. (2015) 242 Cal.App.4th 1367, 1376

["a complaint 'is adequate so long as it apprises the defendant of the factual basis for the claim' "].)

Vasquez also contends that the trial court erred because, according to him, he was under no obligation to seek a permit until the landlords demanded that he do so. But he points to nothing in the lease or the record to support this contention. The court found that the lease required Vasquez to apply for the necessary permits promptly, and this finding was supported by ample evidence. This evidence included the lease itself as well as the testimony of the parties that they understood that the permit "process would take from three to six months . . . [which] was partly why [Vasquez] requested five months of free rent" and told the landlords that the permit expenses could cost him as much as $10,000. We reject Vasquez's claim that he was entitled to remain on the premises indefinitely and rent-free until the landlords repeated a demand for him to do what the lease already required of him.

We also reject Vasquez's argument that he was excused from seeking a permit because neighbors opposed his business. The trial court found "not a scintilla of competent evidence was introduced that supported [this] highly speculative assertion." And it found that that claim was not credible because Vasquez had never even tried to apply for a permit. In the words of the court, Vasquez's eventual "meeting with the neighbors, eighteen months after the business had been operating on the property unlawfully, was a case of way too little and way too late."

Vasquez's reliance on *Wilson v. Zorb* (1936) 15 Cal.App.2d 526, is entirely misplaced. That case involved a claim of fraud after the defendant injured the plaintiff, promised to provide the plaintiff with "further financial assistance in an indefinite amount," but asked to "be given time because of the condition of his finances." (*Id*. at pp. 534-535.) The court held that fraud could not be established because "[t]he informal and general nature of the agreement was such that defendant was entitled to receive from plaintiff a demand for payment and to a reasonable time thereafter within which to make payment, but he was accorded neither." (*Id* at p. 535.) This holding has no application here. Not only is there no claim for fraud, but also the obligation does not involve, as it

did in *Wilson*, an indefinite action to be taken at some vague time in the future. The obligation here was to take a definitive action—i.e., apply for the necessary permits—and to do so within a specified time—i.e., promptly.

Vasquez makes no other cogent arguments to support his claim that the trial court lacked jurisdiction to find that he breached the contract. " 'Appellate briefs must provide argument and legal authority for the positions taken. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." ' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) In short, Vasquez has failed to identify any adequate basis on which we could reverse the court's determinations that he breached the lease.

*C. The Trial Court Properly Determined that the Landlords Were the Prevailing Parties.*

We next consider and reject Vasquez's contention that the trial court erred in determining that the landlords were the prevailing parties. "When a contract contains a provision granting either party the right to recover attorney fees in the event of litigation on the contract, Civil Code section 1717 . . . gives the 'party prevailing on the contract' a right to recover attorney fees . . . . [The section] defines the phrase 'party prevailing on the contract' as 'the party who recovered a greater relief in the action on the contract.' " (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 865 (*Hsu*).)

There is no question that the lease here included a provision allowing the prevailing party to recover attorney fees. And there can be no serious question that the landlords prevailed in the litigation. In the statement of decision and judgment, the trial court ordered that "Vasquez shall take nothing on the Complaint" and awarded "Judgment in the amount of $44,026.63 . . . to [the landlords] and against . . . Vasquez on the Cross-Complaint." In light of these orders, the court's determination that the landlords were the prevailing parties was mandatory, and certainly permissible, since the "decision on the litigated contract claims [was] purely good news for [the landlords] and bad news for the other [Vasquez]." (*Hsu, supra*, 9 Cal.4th at pp. 875-876.)

Notwithstanding this clear authority, Vasquez argues that the trial court erred in its prevailing-party determination because the court "did not rule on [his] Fourth Affirmative defense of frustration of purpose." The argument is unpersuasive. In ruling that Vasquez "shall take nothing on the Complaint" and awarding judgment to the landlords "and against [Vasquez] on the Cross-complaint," the court necessarily rejected all of Vasquez's affirmative defenses. And, in any event, Vasquez forfeited any objection to the court's alleged failure to address a specific affirmative defense by not objecting to the statement of decision. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1136.) "[I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*Id.* at pp. 1133-1134.)

Vasquez's other cursory arguments fare no better. To the extent Vasquez argues that the court could not have found the landlords to be the prevailing parties because it lacked jurisdiction to conclude that Vasquez breached the lease, we have already rejected those jurisdictional arguments. And to the extent he argues that the court could not have determined the landlords to be the prevailing parties because they "recovered zero on their tort claim," the argument fails because "the determination of prevailing party for purposes of contractual attorney fees [is] to be made without reference to the success or failure of noncontract claims." (*Hsu*, *supra*, 9 Cal.4th at pp. 873-874.)

*C. The Judgment Properly Awarded Damages and Interest.*

Lastly, Vasquez contends that the trial court erred in awarding the landlords damages and prejudgment interest. Again, we are unpersuaded.

Vasquez complains that the judgment reflects damages in the amount of $44,026.63 even though the statement of decision found damages for unpaid rent to be only $40,300. This argument ignores that the trial court found Vasquez liable for $3,726.63 for unpaid garbage bills in addition to the unpaid rent. The amount of unpaid rent ($40,300) plus the amount of the unpaid garbage bills ($3,726.63) totals $44,026.63, which is the amount reflected in the judgment. Vasquez repeats his mistake in arguing

that prejudgment interest should have been based on the $40,300 figure rather than the $44,026.63 figure.

The statement of decision also shows how prejudgment interest was calculated, and we discern no error. Of the total damages of $44,026.63, the trial court found that the evidence was "clear and unrefuted" as to the dates when $31,500 of this amount was due. The court therefore applied Civil Code section 3287, subdivision (a), and calculated the amount of prejudgment interest on this amount to be $6,340.69.[1] The court also found that "the record . . . was unclear as to exactly when payment for each item of the balance of the amount awarded [$12,526,63] became due." The court therefore applied Civil Code section 3287, subdivision (b), to this amount, started the accrual of interest as of the date the cross-complaint was filed (April 18, 2016), and calculated the interest on this amount to be $1,878.99.[2] Adding the principal sum of $44,026.63 to the prejudgment interest amounts of $6,340.69 and $1,878.99, the court awarded a total sum of $52,246.31. The calculation was correct.

Finally, we reject Vasquez's argument that the landlords were not entitled to prejudgment interest because "[t]he Cross Complaint did not have a prayer for prejudgment interest." "It is well established . . . that in a contested case interest may be awarded, if the plaintiff is entitled thereto, notwithstanding the complaint contains no prayer for interest." (*Sears, Roebuck & Co. v. Blade* (1956) 139 Cal.App.2d 580, 595.)

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[1] This section provides: "A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt." (Civ. Code, § 3287, subd. (a).)

[2] This section provides: "Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed." (Civ. Code, § 3287, subd. (b).)

## III.
## DISPOSITION

The judgment is affirmed, and respondents are awarded their costs on appeal.

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Humes, P.J.

WE CONCUR:

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Margulies, J.

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Sanchez, J.